

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MEMORANDUM

Case No. CV 17-1076 DSF (ASx)

Date 2/6/18

Title Art Tobias v. City of Los Angeles, et al.

Present: The
Honorable

DALE S. FISCHER, United States District Judge

Debra Plato

Not Present

Deputy Clerk

Court Reporter

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

Proceedings: (In Chambers) Order GRANTING Motion for Leave to File
Second Amended Complaint (Dkt. No. 50)

Plaintiff Art Tobias has filed a motion for leave to file a second amended complaint. The proposed amended complaint would add allegations that, in Plaintiff's criminal prosecution, Defendants violated Plaintiff's civil rights by failing to disclose potentially exculpatory evidence as required by Brady v. Maryland, 373 U.S. 83 (1963). The Court deems this matter appropriate for decision without oral argument. See Fed. R. Civ. P. 78; Local Rule 7-15. The hearing set for February 12, 2018 is removed from the Court's calendar.

Because the motion was set for hearing after the expiration of the time for amending the complaint, Plaintiff must establish good cause to modify the scheduling order. Plaintiff has done so. Defendants did not disclose the complete Murder Book relating to Plaintiff's criminal case until December 18, 2017. Prior to that, Plaintiff believed he had a complete copy, but instead had a much shorter version received from Plaintiff's criminal defense attorney. After receiving the complete copy and conferring with criminal counsel, Plaintiff filed this motion on January 8, 2018. A delay of three weeks is not unreasonable under the circumstances, especially considering that all of this happened during the end of year holiday season. Plaintiff has demonstrated good cause to amend the scheduling order.

Defendants' argument that Plaintiff waived his right to amend by not amending immediately after the partial granting of the motion to dismiss is frivolous. Plaintiff did

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not have the factual basis for the proposed Brady claim until he discovered that the Murder Book contained ~300 pages of material that apparently had not been disclosed to Plaintiff's criminal attorney, including substantial evidence about an alternative suspect. Defendants also argue that the amendment should not be allowed because the added claim would be futile. This argument is unpersuasive because Defendants' futility arguments all go to the factual merits of the claim.

The motion is GRANTED. The second amended complaint should be filed no later than February 16, 2018.

IT IS SO ORDERED.